

IDAHO Supreme Court

JUDICIAL/ADMINISTRATIVE NEWS

DECEMBER 2005

Court Outlines Legislative, Budget Priorities

The Idaho Supreme Court has outlined three priorities for the 2005-06 legislative session, which convenes on January 9, 2006. A year ago, in his State of the Judiciary message to the Legislature, Chief Justice Gerald Schroeder said, "In these difficult budget times and in the face of increased caseloads and social problems, judges have stepped up to tackle the most difficult problems with vigor and purpose."



Chief Justice Gerald Schroeder

The Judiciary continues to perform its historic function of providing individual justice in individual cases. But a new and far different role for the Judiciary is emerging, working along side the other branches of government to solve some of the most intractable, costly social issues of the day. Idaho judges have emerged as quintessential problem-solvers and community leaders, in addition to possessing the requisite wisdom, intelligence, legal ability and experience, integrity and moral courage, industriousness, promptness in performing duties, and capacity to be fair minded and deliberate.

The Court's 2006 priorities reflect the critical and expanding role of the judicial branch.

The Court's priorities are:

- ⚖️ **Restructuring the compensation system for a 21st Century Judiciary;** also addressing retirement system deficiencies in the Judges Retirement Fund and establishing a funding mechanism to encourage retiring magistrate judges to serve as senior judges.
- ⚖️ **Additional resources where the needs are greatest to insure court cases are heard timely and fairly.** With explosive population growth in certain areas of the state, two new district judge positions and four new magistrate judge positions are requested, as well as funds to expand the use of senior judges and assignment of sitting judges from other judicial districts. To address the increasing number of non-English speaking persons appearing as parties and witnesses in district court, funds are also requested to insure the availability of certified court interpreters.
- ⚖️ **Expansion of the use of drug courts, mental health courts, family courts, and other innovative approaches** that have proven effective in addressing some of the most difficult and costly problems confronting Idaho and its courts. Trial judges have expressed their willingness to continue, and if possible, to expand the use of problem-solving approaches to address society's most intractable problems – drug abuse, mental illness, child abuse and neglect, and more.

For additional information, please contact Patricia Tobias, Administrative Director of the Courts.
ptobias@isc.state.id.us

Court Pinpoints Defects in Law, Recommends Statutes

In a letter to Idaho Governor Dirk Kempthorne, Chief Justice Gerald Schroeder has reported on defects and omissions in Idaho law that the Executive and Legislative branches may consider for revision. The annual report is mandated by the Idaho Constitution.

The Court is recommending the possible repeal of Idaho Code 1-1612, which has been rendered inapplicable due to other past changes in law. The Chief Justice's letter also recommends possible amendment of Idaho Code 20-510 to change language from "shall" to "may" regarding inquiries following the filing of a petition under the Juvenile Corrections Act.

Changes are also recommended in Idaho Code 15-5-202 to provide that a testamentary appointment of a guardian of a minor becomes effective upon filing of the guardian's acceptance where the parental rights of the surviving parent have been terminated and in Idaho Code 20-227 pertaining to the arrest of persons under drug court supervision to make it apply to mental health courts as well.

The Chief Justice has also communicated the Court's recommendations for new statutes to the Chairs of the Senate and House Judiciary Committees. Those recommendations include increasing the maximum fine for misdemeanors that were not addressed last session to \$1,000; possible amendment of Idaho law to provide that when a debt owed to the court is paid by credit or debit card that the electronic payment fee will be deposited in the state court fund; and consideration of amended existing law to allow persons who have successfully completed drug court or mental health court to have convictions reduced from a felony to a misdemeanor. Other proposed changes would allow limited driving privileges for drug court participants, adopt as statutes the recommendations of the Domestic Violence Subcommittee of the Court's Children and Families in the Courts Committee, and to allow the Supreme Court to establish rules for the Judges' Retirement Fund.



Judges Form Legal History Society

When Sixth District Judge Ron Bush slides into his chair in a Bannock County courtroom he's sitting, in a way, on more than 50 years of Idaho history. The chair he uses in court goes back to the opening of the courthouse. In Lewiston, when attorneys and judges face each other across the bench and bar, they are separated by more Idaho history. The woodwork dates back to Idaho territorial days when Lewiston was the capitol of Idaho Territory.

The history of Idaho's legal system, judges and attorneys is a vital part of the state's rich and interesting story, but until recently little was being done in a comprehensive manner to gather and preserve that history. Judge Bush and U.S. District Court Judge Lynn Winmill are co-chairing an effort to give Idaho's legal history the attention it deserves.

"The purpose is to preserve the history of the courts and the bar in Idaho," Judge Bush said. He added that working group of approximately 20 individuals from around the state have been meeting since last summer to develop plans to preserve and celebrate the state's legal history. Immediate efforts are focused on collecting oral histories from senior members of the Idaho bar and bench.

"Right now we are making arrangements to set up training sessions for folks who are willing to commit to do oral histories and will be aiming at probably in March or April," to accomplish the training the Judge said. Future efforts include a potential issue of The Advocate devoted to oral history and a regular feature on Idaho legal history.

Judge Bush said a particular effort is being made to involve younger Idaho lawyers in the oral history projects. "There is intrinsic value in having young lawyers involved in recording the history of a more senior member of the bar. They are bound to learn some things from that wisdom and experience," he said.

The Idaho legal history group is also working on plans to commemorate the 100th anniversary of the spectacular 1906 trial of leaders of the Western Federation of Miners who were accused of plotting the assassination of former Idaho Governor Frank Steunenberg. The trial, recounted in Anthony Lucas' book "Big Trouble," involved, among others, famous defense attorney Clarence Darrow and U.S. Senator William E. Borah, who served as a special prosecutor.

For further information please contact Judge Ron Bush at (208) 236-7250



Judge Finds Ways to Connect People-Institutions

Lincoln County Magistrate Judge Mark Ingram says there is more involved in providing public safety than effective action by police, prosecutors and the courts. Real public safety in vital communities is a function of an engaged population and civic institutions, including the courts, which are engaged in community leadership and problem solving.

"If you conceive of a very safe place, a safe community, and contrast that with places that are hot beds of criminality you will probably note that the presence of police in force is more likely in a place where crime is rampant," Judge Ingram said recently.

"The question is whether we feel safer with a real, obvious police presence or where society is more cohesive, where there is a healthy social environment, where people are really connected to one another and to their civic institutions?" Judge Ingram said.

The Judge says a concrete example of a community where people are connected and engaged with their public institutions is the Shoshone School District where a restorative conference has been organized to deal with referrals of youngsters who are displaying behavioral problems in school. By providing neutral outside intervention, by aggressive assessment of the issues, and open discussion with all the involved parties, "we can be ultimately successful in diverting kids who are headed down the road to the criminal justice system," Judge Ingram said.

The effort, which the Judge says borrowed extensively from similar efforts pioneered by Judge Patricia Young in Boise County, is relatively new but is being very well received by the school district and the community. The Court's essential role, he said, is to serve as an effective convener of the process.



"I live in fear that the Court system is increasingly irrelevant to people's lives. We need to find ways to engage people in meaningful ways. These days wearing the black robe and saying this is the way it will be just doesn't have the weight it might have had. Re-inventing ways to engage people who have pulled away from their formal institutions is part of our responsibility."

Contact Magistrate Judge Mark Ingram - (Lincoln County)

Phone: (208) 886-2173

Email: mingram@lincolncountyid.us



District Judges Seminar – Plan NOW to attend!

The annual District Judges Seminar is planned for Tuesday, January 17, through Friday, January 20, 2006. The planning is in full swing for the best District Judges Seminar ever this coming January, and judges are urged to arrange their calendars so they can attend this important educational event. We are, of course, scheduling the annual updates on criminal cases, civil cases, Department of Correction, etc., **but we are particularly eager to address any particular topics of specific and topical concern to District Judges.**

A review of last year's evaluations indicates that Sentencing is at the top of the list of requested topics. Additional and expanded training on Evidence is also high on the list. Judges last year also requested an expanded "Roundtable" or "Emerging Issues" session, where more informal discussion among judges can take place. We will accommodate as many of these requests as possible. Please direct your specific topics or suggestions to Judge Lowell Castleton via email to lcastleton@idcourts.net, or call him at 208-947-7417.

Also, please be aware that we are planning for a Court Reporter's Seminar to be held in Boise on Thursday and Friday of the same week, January 19-20, 2006. Please help us by making certain that reporters plan to attend.

Resources Available to Judges

The Idaho Department of Juvenile Corrections (DJC) is now providing Assistance to Court Screening Teams. Teams can be used in any case where multiple agencies were (or could be) involved in the development of a comprehensive recommendation to the Court.

In general, it is DJC's policy to have a clinical staff person, for example, a Clinical Supervisor, Clinician, or Juvenile Services Coordinator, participate in these Screening Teams, with the option of the District Liaison staff assisting. The clinical contact person for the Magistrate Judges is the Regional Clinical Supervisor, as follows:

- ♣ Region 1 (Districts 1 & 2): Sandra Godfrey – (208) 799-3332
- ♣ Region 2 (Districts 3, 4, & 5): Donna Hislop and Heidi Lasser – (208) 465-8443

- ♣ Region 3 (Districts 6 & 7): Murray Doggett – (208) 624-2462

Dr. Hulbert is the Supervisor for the four Clinical Supervisors, and he can be reached at: (208) 334-5100, Ext. 258 or by cell at (208) 880-5494.

Please email Judge Varin (camasmaj@northrim.net) if you have any questions.

Children's Mental Health and Child Welfare

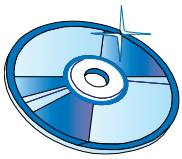
As requested at the Magistrate Judges Institute, below are the names and phone numbers of DHW's Regional Program Managers for children's mental health and child welfare. Judges can contact the managers with any questions related to children's mental health and child welfare.

- ♣ Region I – Rob Gregory – (208) 769-1515
- ♣ Region II – Donna Francis – (208) 799-4341
- ♣ Region III – Jeremy Player – (208) 455-7026
- ♣ Region IV – Kurt Lyles – (208) 334-6802
- ♣ Region V – Kathy James – (208) 736-3020 ext 418
- ♣ Region VI – Frances Lunney – (208) 239-6240
- ♣ Region VII – Fred Kirn – (208) 528-5919

Idaho Benchguide Practice Tip

It has been discovered that the annotation function of the Idaho Code is not working. The feature was available via the > Search this disc for cases citing this section link at the bottom part of a displayed statute. If one clicks this link, a Premise message will appear stating that term (or cite) was not found. To remedy this problem, try running the statute's cite in the Idaho Reports database (ID-CS1) in the Benchguide. For example, to get annotations for Idaho Code §12-121 one should run 12-121 in the Terms & Connectors Query window. You will then get a cite list of cases that do cite § 12-121.

If you have questions, please call Rick Visser at (208) 334-3316 or email him at rvisser@idcourts.net



Benchguide, Clerk Manual (CD) Delivered

The latest version of the Idaho Benchguide and Clerk of the District Court Manual (CD and Premise Software) has been delivered and/or loaded and is now available to all court personnel. Most will be able to access the Benchguide and Manual through their county intranet servers. If you have loaded the Premise Software on your own computer, the resource is available to you. There have also been a limited number of actual CD discs delivered (see note below). Included in the updated version are the following:

Updated materials on the Benchguide:

- ⚖ 1.5.2 A Primer for Idaho Trial Judges in Awarding Attorney Fees (Davis/Walters handbook revised March 2005 by Judge John P. Luster and Thomas B. High, Esq.)
- ⚖ 2.1.1 Warrants, Probable Cause and Bail (Judge Gaylen Box, New Handbook Distributed at New Judges Orientation, May 2005)
- ⚖ 5.12.1 Administrative District Judge – Job Description – Powers and Duties – (Supreme Court Order dated August 4, 2005)
- ⚖ 5.14.2 Plan B Rules for Judicial Retirement (Handbook Revised April 27, 2005)

New sections on the Benchguide:

- ⚖ 5.26 Benchbook from the Interstate Commission on Supervision of Adult Offenders

Updated Sections on the Clerks Manual CD include:

- ⚖ 6.3.7 Infraction Penalty Schedule
- ⚖ 6.5 Civil Cases
- ⚖ 6.6 Probate

The Clerks Manual and Training Committee are involved in a complete revision of the Clerk of the Court Manual and will hopefully be available with the next update. The same process is underway for the judges' Benchguide.

If you have comments, suggestions or problems with the Benchguide:

please contact Judge Lowell Castleton (208) 947-7417;

lcastleton@idcourts.net.

If you have comments, suggestions or problems with the Clerk of the District Court Manual:

please contact Janica Bisharat (208) 334-2246;

jbisharat@idcourts.net.

If you wish training on either the underlying Premise software, or on the use of the Benchguide, either by phone (which can be very effective), or otherwise, please contact Rick Visser (208) 334-2477, or rvisser@idcourts.net.

Presently all county servers will have the Benchguide and Manual installed and thus available to all court personnel via any county intranet. However, if either Judges or others have a specific desire for an individual separate CD (such as for travel or home research use), please direct such requests via email to either Judge Castleton or Janica Bisharat at the addresses listed above. Otherwise, no actual CD's will be distributed with the next update – since the same is already available on all county servers.

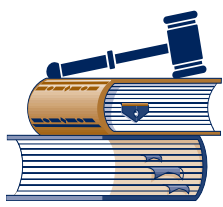


Bonneville County's Mental Health Court received a national site visit from a team of experts in mid-October as the final step in its application to be a national Learning Site for mental health courts. In addition to Bonneville County the other eight finalists for the Mental Health Courts Learning Sites Initiative include:

- | | |
|--|---|
| ⚖ Akron Municipal Mental Health Court, OH | ⚖ Dougherty County Mental Health Court, GA |
| ⚖ Allegheny County Mental Health Court, PA | ⚖ Hennepin County Mental Health Court, MN |
| ⚖ Buffalo Mental Health Court, NY | ⚖ Multi-Jurisdictional Mental Health Court, Washoe County, NV |
| ⚖ Butler County Mental Health Court, OH | ⚖ Orange, Person, Chatham Counties Mental Health Court, NC |

Five of the nine sites, out of approximately 120 existing courts, will be chosen as learning sites. Sites will have the opportunity to become leaders in the field by identifying areas where they need improvement and working with expert consultants to advance those areas.





New Orders & Rule Changes

For current New Orders or Rule Changes, go to <http://www.isc.idaho.gov/rulesamd.htm>

The Idaho Criminal Jury Instructions are presented in RTF (rich text format), to allow each file to be brought into any word processor for editing. Please review the Order Issued March 15, 2004 and Order Issued October 22, 2005 regarding these Criminal Jury Instructions.

All Criminal Jury Instructions - One File

The Supreme Court issued an order on October 22, 2005, adopting revised Idaho Criminal Jury Instructions. The order states that trial judges should use these instructions "unless the judge finds that a different instruction would more adequately, accurately or clearly state the law." Some of the more significant revisions include the following:

- ⚖ Several instructions have been revised to reflect statutory changes.
- ⚖ Instructions have been added for several offenses not previously addressed in ICJI. These include: willful concealment (ICJI 578); failure to appear (ICJI 650); reckless driving (ICJI 1030); inattentive driving (ICJI 1031); eluding a peace officer (ICJI 1032 and 1033); leaving the scene of an accident (ICJI 1035, 1036, 1037 and 1038); passing a school bus (ICJI 1040); fictitious display or registration or license plates (ICJI 1045) domestic assault or battery in the presence of a child (ICJI 1279); violation of a civil protection order (ICJI 1281); disturbing the peace (ICJI 1290); and carrying a concealed weapon (ICJI 1415).
- ⚖ Comments and citations have been added to several instructions.
- ⚖ Particularly worth noting are the comments on included offenses (ICJI 225) and the burden of proof on defenses (ICJI 1500).
- ⚖ The definitions of malice aforethought and of express and implied malice in homicide cases has been revised in an effort to make the instruction more understandable and meaningful, while continuing to conform to the essential meaning of the statutory definition (ICJI 703).
- ⚖ Instructions on some offenses have been separated from the instructions on their included offenses. (See, e.g., ICJI 403 on possession of a controlled substance, and the new ICJI 403A on possession of a controlled substance with intent to deliver or manufacture.)
- ⚖ The mental element of several controlled substance offenses has been clarified.
- ⚖ Instructions have been added on stipulations of fact (ICJI 344) and expert testimony (ICJI 345).

The revised instructions are based on recommendations made by the Criminal Jury Instruction, chaired by Justice Daniel T. Eismann.

Please contact Michael Henderson at (208) 334-2246 or mhenderson@idcourts.net with any questions or suggestions.

Child Protection Issue

A message from the Department of Health and Welfare: When a child in DHW's care – either for Children's Mental Health or Child Protection – runs away and there is active court involvement, DHW is now requiring that case workers immediately notify the judge involved in the case on the critical incident report. The judge will also be notified of the return of the child.

Child Protection Orders and IVE Eligibility: The Idaho Supreme Court and the Idaho Department of Health and Welfare are collaborating on a new process to maximize the federal contribution to maintenance payments for Idaho's abused and neglected children who are in foster care. Section 471 of the Social Security Act (42 U. S. C. 671) and 45 CFR Section 1356.21 set forth the eligibility requirements that must be met in order for Idaho children to receive federal foster care maintenance payments. Eligibility requirements include specific findings that must be made by state courts at specific times in a child protection cases:

- ⚖ In the first order sanctioning removal, a finding that it is contrary to the child's welfare to return home.
- ⚖ Within 60 days of the date the child was removed from the home, a finding that the Department did/did not make reasonable efforts to prevent removal.
- ⚖ Within twelve months of the date the child is considered to have entered foster care, a permanency hearing must be held and the court must determine whether the Department did or did not make reasonable efforts to finalize the permanency plan for the child.

Beginning in January 2006, the Child Protection Coordinator will be notified when an order in a child protection case does not include the language necessary for an Idaho child to establish or maintain eligibility to receive federal foster care maintenance payments. The Child Protection Coordinator will return a copy of the order to the judge who signed it, with a cover sheet explaining what is missing from the order and suggesting language that will meet the statutory eligibility requirement.

If, after review of the order and cover letter, the judge determines that the language in the order does not meet the statutory mandate, the judge has several options. First, if the necessary finding was made on the record, the judge may attach to the Order a copy of the transcript showing that the appropriate finding was made and return the order to the Department of Health and Welfare. Second, a hearing can be held at which the appropriate finding is made and a new order with the requisite language may be entered. Third, in some cases, such as the required finding that the Department has made reasonable efforts to finalize the permanency plan, the finding can be made at the next regularly scheduled review hearing. Federal regulations do not allow what would appear to be the most expedient solution, entry of an amended order.

Questions about the process can be directed to Debra Alsaker-Burke at (208) 344-5993 or Corrie Keller at (208) 334-2248.





The Idaho Supreme Court has adopted amendments to the existing rules on cameras in the courtroom.

The new rules were effective December 15, 2005

Amendment of I.C.A.R. 45, 46a and 46b - CAMERAS IN THE COURTROOM



Judge Petrie Returns

Judge Gordon Petrie returned home and returned to the bench on November 21. Thank you, Judge, for your service! Welcom Back!

Justice Trout Named

Supreme Court Justice Linda Copple Trout has been appointed as District 13 director of National Association of Women Judges (NAWJ) for a one year term. Congratulations!

Jaeger to be Honored at BSU

It was recently announced that Norma Jaeger will be recognized by BSU Women's Center as one of 25 "Woman Making History" in Idaho, with an award ceremony scheduled for March 2, 2006. Congratulations, Norma!

Judge Horton Honored

Fourth District Judge Joel Horton was recognized at a reception and dinner in honor of the Legal Services Corporation Board of Directors. On behalf of the Supreme Court, Justice Trout recognized his outstanding service as Chair of the Access Committee and presented a plaque in appreciation.

Magistrate Judges Elect Officers

At the Magistrate Judges Association meeting in November, the state's Magistrate Judges thanked Judge Watson for his service as president and presented him with a gift of appreciation. The Magistrate Judges also elected the following officers:

- ⚖ President: Judge Timothy Hansen
- ⚖ President-Elect: Judge Debra Heise
- ⚖ Secretary-Treasurer: Judge Ryan Boyer
- ⚖ Past-President: Judge Barry Watson

Ada Magistrate Judge Candidates Named

The following attorneys have applied for the Ada County Magistrate Judge position being vacated by Judge Vehlow:

- ⚖ Peter Rudge Anderson, Boise
- ⚖ Jody Patrice Carpenter, Boise
- ⚖ Ann Largent Cosho, Boise
- ⚖ Theresa L. Gardunia, Boise
- ⚖ John T. Hawley, Jr., Boise
- ⚖ Amanda C. Horton, Boise
- ⚖ Rinda R. Just, Boise
- ⚖ John Charles Keenan, Boise
- ⚖ David Dixon Manweiler, Boise
- ⚖ Philip R. Miller, Mountain Home
- ⚖ Mary "Molly" Michaela O'Leary, Boise
- ⚖ John E. Rumel, Boise
- ⚖ Craig Alan Steveley, Boise

New Contact Information

Janica Bisharat has recently moved back to Boise. Janica coordinates clerk education programs and manages the Court Interpreter Program. Please make a note of her new contact information.

Janica Bisharat
Clerk of the District Court Education Coordinator
Court Interpreter Program Manager
Administrative Office of the Courts
P.O. Box 83720
Boise, Idaho 83720-0101
Phone: (208) 334-2246
FAX: (208) 947-7590
E-mail: jbisharat@idcourts.net



ISTARS NEWS

Coming soon to a courthouse near you!

The elves of the Court (aka the IT department), lead by Santa (aka John Peay), have been busy delivering new PC's to folks all over Idaho. The upgrades began in October with the Third District and continuing in November with the First District. With the help of EnPointe

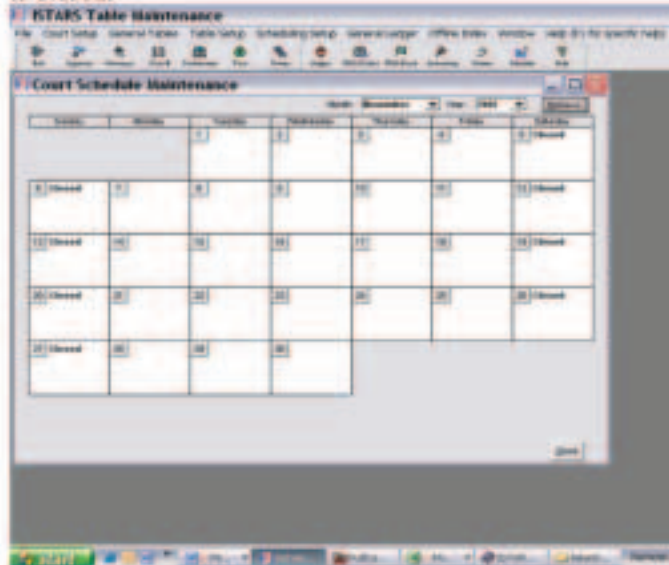
Technologies, more than 300 machines have been installed. All used machines have been donated to the non profit organization, Computers for Kids of Idaho, which brings PC's to underprivileged children within the state of Idaho (www.cfkidaho.org). December's upgrade focused on the Second District.

ISTARS YEAR END CALENDAR SETUP DECEMBER 2005

As the year end approach's there are always some things to think about setting up for the next year(s). One of those things is the court calendar.

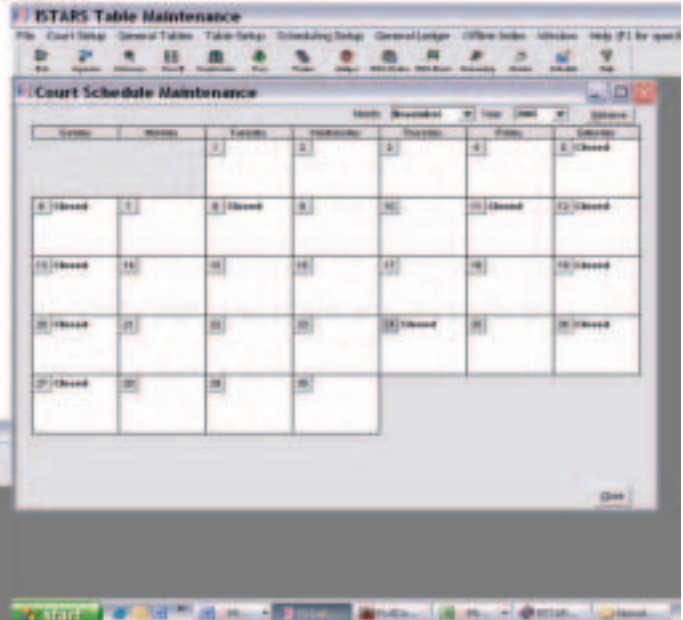
A lead worker in each court will want to go into:
Tables
Scheduling Setup
Court Schedule

From there select the current month and year and select retrieve. The system will bring up a calendar for the current month. This will be a blank calendar except for the word "closed" on dates that the court is closed.



As you can see from the example above the weekends are closed for November 2005, but my calendar does not reflect that the court would be closed on Election Day, Veteran's Day or Thanksgiving Day. To change the calendar to reflect those closures all I have to do is point the mouse right at the number date and click.

Doing this will close your calendar for that date.



This is a great time to go over the judicial calendar for the next 2 years, and make sure that all weekends and holidays are closed. This is important and will protect the scheduling clerk from accidentally setting court on those dates... Note: If your calendar does not show that court is closed on the weekends close those dates in the same manner described above. If that is the case please click on the Saturday's and Sunday's for the next two years and make sure that they are closed.

When you finish with one month you select the next month from the drop down list at the top of the screen and retrieve that month... I recommend that you keep your calendar set up 2 years ahead if possible.



JUDICIAL/ADMINISTRATIVE NEWS
is published by the Idaho Supreme Court.

Chief Justice Gerald F. Schroeder

Justice Linda Copple Trout

Justice Daniel T. Eismann

Justice Roger S. Burdick

Justice Jim Jones

We are very interested in your news and information. If you have or are aware of items that should be featured in a future edition of Judicial/Administrative News please let us know!

News items may be submitted for publication to Patricia Tobias:

451 West State St.
Boise, ID 83702
Phone: 208-334-2246
FAX: 208-947-7590
E-mail: ptobias@idcourts.net

Thanks!



Note: For the most up-to-date Judicial Calendar,
check the Judiciary's homepage at
<http://www.isc.idaho.gov/calendar.htm>